**Reply** **form: MiFIR Review**

RTS 2, RTS on reasonable commercial basis and RTS 23

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Responding to this paper

ESMA invites comments on all matters in the Consultation Paper and in particular on the specific questions in this reply form. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **28 August 2024.**

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

* Insert your responses to the questions in the Consultation Paper in this reply form.
* Please do not remove tags of the type <ESMA\_QUESTION\_CP1\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
* If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
* When you have drafted your responses, save the reply form according to the following convention: ESMA\_CP1\_nameofrespondent.

For example, for a respondent named ABCD, the reply form would be saved with the following name: ESMA\_CP1\_ABCD.

* Upload the Word reply form containing your responses to ESMA’s website (**pdf documents will not be considered except for annexes**). All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

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# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Euronext |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | Europe |

# Questions

**CP on the amendment of RTS 2**

1. Do you agree with the definition of CLOB trading systems proposed above? If not, please explain why.

<ESMA\_QUESTION\_CP1\_1>

Euronext welcomes the review of MiFIR to enhance and improve pre- and post-trade transparency in non-equity markets, and we fully support the approach to improve, simplify and further harmonize transparency. As a general principle, Euronext is of the view that as many systems as possible should be subject to the pre-trade transparency requirements and it is important the systems that operate in similar ways, are subject to the same requirements.

While we generally support the definition, we would like to get clarity on whether trading systems where matching is not automatic but requires confirmation by the Liquidity Provider, and could therefore require manual intervention, are considered within scope of the definition. We believe that these “last look” systems should also be subject to the same level of transparency as trading systems with firm prices, in particular those with a low rejection rate combined with quick response times.

<ESMA\_QUESTION\_CP1\_1>

1. Do you consider that the definition should include other trading systems? Please elaborate.

<ESMA\_QUESTION\_CP1\_2>

As referenced in our response to Q. 1, Euronext would like to get clarity on whether trading systems where matching is not automatic but requires confirmation by the Liquidity Provider, and could therefore require manual intervention, are considered auction trading systems. We believe that these “last look” systems should also be subject to the same level of transparency as trading systems with firm prices ,in particular those with a low rejection rate combined with quick response times.

<ESMA\_QUESTION\_CP1\_2>

1. Do you agree that the description of periodic auction trading systems set out in Annex I of RTS 2 is relevant for specifying the characteristics of those trading systems in the revised RTS? If not, please elaborate.

<ESMA\_QUESTION\_CP1\_3>

Similar to our response to Q.1, Euronext is of the view that as many systems as possible should be subject to the pre-trade transparency requirements and it is important the systems that operate in similar ways, are subject to the same requirements.

Focusing in on one specific type of system, we would like to get clarity on whether trading systems where matching is not automatic but requires confirmation by the Liquidity Provider, and could therefore require manual intervention, are considered auction trading systems. We believe that these “last look” systems should also be subject to the same level of transparency as trading systems with firm prices, in particular those with low rejection rate combined with quick response times.

<ESMA\_QUESTION\_CP1\_3>

1. Do you agree to use ESA 2010 to classify bond issuers If not, please explain and provide alternatives on how clarify how to classify sovereign, other public and corporate issuers.

<ESMA\_QUESTION\_CP1\_4>

While we agree this aspect of bond issuer classification is challenging, we do not believe this proposal will improve on the existing ESMA bond type definitions and could give rise to further complications as access to some of the information required to make the determination as per the proposal may not be available. We would also be concerned that this approach could slow down the listing process which would negatively impact the market. Therefore we suggest that ESMA does not include this proposal as the existing definitions of each bond type as per RTS 2 Annex III Table 2.2 are sufficient.

<ESMA\_QUESTION\_CP1\_4>

1. Do you agree with the proposed LiS pre-trade thresholds for bonds? In your answer, please also consider the analysis provided in sections 4.2.1.

<ESMA\_QUESTION\_CP1\_5>

Yes, Euronext supports these proposed thresholds. It is important that transparency is enhanced wherever possible so we believe these are set at appropriate levels.

We also believe it is important that this is monitored carefully in the broader context as we are concerned that given pre-trade requirements have been removed for other systems such as Systematic Internalisers, that trading on lit markets should not divert to these systems simply to avoid these transparency requirements.

<ESMA\_QUESTION\_CP1\_5>

1. Do you agree with the proposed LiS pre-trade thresholds for SFPs and EUAs? In your answer, please also consider the analysis provided in section 4.2.2.

<ESMA\_QUESTION\_CP1\_6>

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<ESMA\_QUESTION\_CP1\_6>

1. Do you agree with the approach taken for the illiquid waiver for bonds, SFPs and EUA? If you disagree with how the liquidity threshold is determined, please include your comments in Q11 for bonds, Q14 for SFPs and/or Q17 for EUAs.

<ESMA\_QUESTION\_CP1\_7>

Yes, Euronext agrees and welcome ESMA’s approach that should ensure around 90% of total volumes and number of transactions would fall under the definition of liquid bonds as this will certainly improve transparency in the market.

However we would like to highlight that while we understand the rationale for the new approach in determining liquidity is to reduce complexity and the focus on outstanding issuance size seems reasonable given it is a valid indicator of liquidity, there are other factors that may also be very relevant and impact the liquidity of these securities. In addition, moving to static thresholds will certainly reduce complexity but may mean it does not remain fully accurate. It will be important for ESMA to monitor this framework and address any issues that may arise.

<ESMA\_QUESTION\_CP1\_7>

1. Do you agree with the changes to post-trade fields summarised in Table 5? Please identify the proposal ID in your response.

<ESMA\_QUESTION\_CP1\_8>

Regarding the first proposal to introduce a column-naming convention, we do not support this approach as it is not practical for market data disseminated via technical protocols.

Regarding Field 16 Venue of publication, we disagree with this as the type of venue of publication (RM, MTF, OTF, APA) is already available via ESMA’s registers; it does not need to be included in the post-trade transparency publication also.

Regarding Field 19, it is proposed to introduce transaction flags but the format and logic is not aligned with that of the MMT which venues already implement. This consists of several levels of subsequent nested dolls codes to identify transactions with granularity. We suggest ESMA reviews this in order to ensure consistency with MMT.

Regarding Field 20, in relation to the new flag for the trading system types, it is not clear what should be used for off-order book on-exchange trading.

<ESMA\_QUESTION\_CP1\_8>

1. Do you agree not to change the concept of “as close to real-time as technically possible”? If not, what would be in your view the maximum permissible delay?

<ESMA\_QUESTION\_CP1\_9>

Yes, Euronext agrees there should be no change to this.

<ESMA\_QUESTION\_CP1\_9>

1. Do you agree with the changes proposed for the purpose of the reporting of OTC transactions?

<ESMA\_QUESTION\_CP1\_10>

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<ESMA\_QUESTION\_CP1\_10>

1. Do you agree with the liquidity thresholds set out in Table 7 above? If not, please provide an alternative approach.

<ESMA\_QUESTION\_CP1\_11>

Yes, while we note there seems to be quite a difference between the thresholds for sovereign and covered bonds, in general we support the thresholds as it appears the approach will result in increased transparency which will be beneficial for the market.

While we agree with ESMA’s approach to consider the amount outstanding rather than the initial issuance size, so that it takes into account any additional issuance or buy-backs during the life of the bond, we would suggest it should be clarified that there will be one source for the data on the outstanding issuance size and that it is maintained by ESMA. Trading venues would not have this information and if it is not centralised within ESMA there is a risk that different trading venues may use different figures resulting in divergent application of the transparency requirements. The general process for this is not clear to us given the current approach under paragraph 18 (p.172) is removed. We suggest that this paragraph needs to be updated in line with the new approach so that it is clearly set out that the liquidity determination is published by ESMA on a regular basis, perhaps daily, to ensure convergence amongst trading venues.

In addition, it would be helpful for ESMA to clarify whether the current rules set out in its Post-trade Transparency Manual remain valid regarding the default value of liquidity and threshold assignment in the case of the first listing or when the value is not present, or will these be updated.

Lastly, as per our response to Q. 7, we would like to highlight that while we understand the rationale for the new approach to determining liquidity to try to reduce complexity and the focus on outstanding issuance size seems reasonable given it is a valid indicator of liquidity, there are other factors that may also be very relevant and impact the liquidity of these securities. In addition, moving to static thresholds will certainly reduce complexity but may mean it does not remain fully accurate. It will be important for ESMA to monitor this framework and address any issues that may arise.

<ESMA\_QUESTION\_CP1\_11>

1. Do you agree with the proposed thresholds specified in the above Tables? If not, please justify by providing qualitative data to your analysis and differentiating per asset class.

<ESMA\_QUESTION\_CP1\_12>

Yes, Euronext agrees and we strongly support such an approach that will result in 90% of transactions post-trade transparent on a real time basis.

<ESMA\_QUESTION\_CP1\_12>

1. Do you agree with the maximum deferral period set out in the tables above?

<ESMA\_QUESTION\_CP1\_13>

While we note the deferral periods ESMA has proposed relate to the figures set out in the Level 1 text, we are of the view that these figures were agreed as the maximum deferral and therefore could be lower if deemed appropriate. Given ESMA is also tasked with an objective of improving transparency, we suggest that for the first category of medium size trades, that they should in fact be subject to real-time transparency. In our view, a delay of 15 mins is not necessary and only adds an additional layer of complexity that is of no real benefit to the market. Indeed, the 15-minute deferral for Category 1 would result in some trades that are currently published in real-time today being instead published with a 15-minute deferral, e.g. liquid sovereign bond trades with trade size of EUR 5m – 5.5m based on Post-Trade SSTI threshold. We would suggest Category 1 being subject to real-time transparency.

<ESMA\_QUESTION\_CP1\_13>

1. Do you agree with a static determination of liquidity and determine that all SFPs are illiquid? If not, can you suggest any alternative methodology on how to define liquidity for SFPs?

<ESMA\_QUESTION\_CP1\_14>

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<ESMA\_QUESTION\_CP1\_14>

1. Do you agree not to introduce changes to the threshold size currently applicable to SFPs as provided in RTS 2?

<ESMA\_QUESTION\_CP1\_15>

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<ESMA\_QUESTION\_CP1\_15>

1. Do you agree with the maximum duration proposed?

<ESMA\_QUESTION\_CP1\_16>

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<ESMA\_QUESTION\_CP1\_16>

1. Do you agree with a static determination of liquidity and determine that all EUA are liquid? If not, can you suggest any alternative methodology on how to define liquidity for EUAs?

<ESMA\_QUESTION\_CP1\_17>

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<ESMA\_QUESTION\_CP1\_17>

1. Do you agree with the proposed framework for the deferral regime for EUAs? If not, please suggest an alternative methodology.

<ESMA\_QUESTION\_CP1\_18>

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<ESMA\_QUESTION\_CP1\_18>

1. Do you agree with the classification of ETCs and ETNs as types of bonds?

<ESMA\_QUESTION\_CP1\_19>

While we understand the rationale for classifying these as bonds, we suggest ESMA should try to align the transparency requirements with those applying to ETFs given they are traded in a similar manner, and consequently should be included in the ETF consolidated tape.

<ESMA\_QUESTION\_CP1\_19>

1. Do you agree with the liquidity determination for ETCs and ETNs. If not, please suggest an alternative approach to the liquidity determination.

<ESMA\_QUESTION\_CP1\_20>

Yes, we agree with the liquidity determination.

<ESMA\_QUESTION\_CP1\_20>

1. Do you agree with the pre- and post-trade thresholds? If not, please suggest an alternative methodology.

<ESMA\_QUESTION\_CP1\_21>

As per our response to Q. 19, we suggest ESMA should try to align the transparency requirements with those applying to ETFs given they are traded in a similar manner.

<ESMA\_QUESTION\_CP1\_21>

1. What is your view in relation to the implementation of the supplementary deferral regime for sovereign bonds?

<ESMA\_QUESTION\_CP1\_22>

Euronext agrees with ESMA’s suggestion for only the volume omission supplementary deferral to be used with respect to sovereign bonds. The aggregation supplementary deferral would be very difficult for data users to consume and for data providers to implement and manage.

<ESMA\_QUESTION\_CP1\_22>

1. Do you agree not to make any changes to the temporary suspension of transparency obligations framework as it currently in RTS 2?

<ESMA\_QUESTION\_CP1\_23>

Yes, Euronext agrees no changes are necessary.

<ESMA\_QUESTION\_CP1\_23>

1. Do you have any further comment or suggestion on the draft RTS? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_24>

It is important that implementation costs and timelines (as per our response to Q. 25) are fully recognised and taken into account when finalising these technical standards.

Euronext also wishes to highlight a more general point on supporting any streamlining of these requirements. While different RTS are being consulted upon at different times as part of the MiFIR Review, we urge ESMA to take a holistic approach to all the various RTS reporting requirements to ensure the most consistent and efficient approach is taken, so that the process is simplified as much as possible. With this in mind we would suggest from a regulatory reporting perspective, the ultimate aim should be to have two general files reported directly to ESMA (one including all referential data and one including all quantitative data).

<ESMA\_QUESTION\_CP1\_24>

1. What level of resources (financial and other) would be required to implement and comply with the draft amended RTS and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organisation, where relevant.

<ESMA\_QUESTION\_CP1\_25>

These changes will require a number of different system updates and is considered a significant IT/Market Services project from a cost and resourcing perspective, with various workstreams required for managing new data outputs, including new reference data and new market data fields and formats to be managed, new transparency indicators to include on trade messages, as well as an extensive change to the deferral management system.

In addition, given the MiFIR Review covers many other aspects relevant for Euronext, it is critical from a project implementation point of view that timelines are aligned wherever possible. In this instance, we note it is proposed that the changes to RTS23 are likely to be applicable 18 months after publication of the Technical Standards and we strongly urge ESMA to take the same approach for changes to RTS2. Given the interlinkages between RTS2 and RTS23 and the fact that fields are moving from RTS2 and RTS23, we believe the timelines need to be the same – otherwise, it will result in missing data for a period of time as fields will have been removed from RTS2 but not yet included in RTS 23 which makes no sense. In addition, this could lead to potential rejections in files if they are not all fully aligned. Therefore, a harmonised approach seems the most practical and appropriate approach and will give the market sufficient time to implement the changes so is far less likely to create problematic issues and additional risks.

<ESMA\_QUESTION\_CP1\_25>

**CP on the RTS on reasonable commercial basis**

1. Do you agree to the general approach used to specify the costs and margin attributable to the production and distribution of market data? Please elaborate.

<ESMA\_QUESTION\_CP1\_26>

Yes, Euronext **generally agrees** with the approach used to specify the costs and margins attributable to the production and distribution of market data. We formulate key remarks and recommendations in the following areas however:

1. **Costs:**

* We appreciate the fact that the RTS recognises the existence of **shared costs (1.1).** This is a key element. In addition to this, it is also critical for the RTS to recognise that data providers have different business models in the production and dissemination of data. Due to the variety of **business models**, practices of **how shared costs are allocated** across different data providers will be heterogenous. In the future, it is to be expected that such **heterogeneity** will remain and should not be taken as reflecting a need to adjust further the methodology on cost allocation **(1.2)**.
* The list of cost categories as defined by ESMA are **all** very important and relevant (1.3). The **residual cost category** in the framework proposed by ESMA makes a lot of sense. We would simply recommend that the list be adjusted to incorporate audit costs.

1. **Margins:** Euronext believes that maintaining a principle-based approach to specify margins is critical and agrees with the proposed draft RTS Article 3 and Article 1.1(f). At the same time, Euronext recommends that **Article 3.3 of the draft RTS should**, in addition to highlighting the importance of enabling data access to the maximum number of clients, **underline** that **margins also need to be sufficient** to ensure the **sustainability** of the activities undertaken by **the data provider**.
2. In the context of a **CTP**, a **dedicated RCB model** **should be developed**.

Context:

Euronext welcomes ESMA’s consultation and is generally **supportive of ESMA’s intention to increase clarity, consistency and transparency** of market data regulatory obligations. We are also mindful of the specific difficulties that this technical area can pose. Indeed, this is a complex area where there is a **fine line** between requirements aimed at increasing transparency and **requirements that may be more intrusive in their effects**. With this in mind, we have sought to provide considered feedback on the approach proposed and reiterate where relevant arguments that in our view remain key considering the broader market data ecosystem and the need to assess market data holistically.

When finalising the approach on this topic it is key to bear in mind, firstly, that data providers under MiFID II/R, operate in a highly intermediated value chain. More than 75% of the market data distributed by Euronext are distributed via data redistributors and sub-data redistributors. Thus, there is a risk that any price reduction at the trading venue level will not be passed on to end users since data redistributors are not within the scope of MiFID II/MiFIR. Secondly, data providers - and particularly operators of pre-trade transparent markets - are central to the functioning, attractiveness, visibility and liquidity of European capital markets. As such, particular care should be taken to ensure that the RCB framework does not undermine incentives for these players to continue to operate. Recognition of these elements is particularly critical in a context where incentives for data provision and for pre-trade transparent market operation are challenged simultaneously by: (i) frequent and burdensome reviews of the RCB framework, (ii) the creation of a Consolidated Tape(s), (iii) the recent evolutions regarding pre-trade transparency requirements under the MiFIR Review and how they apply to trading venues and systematic internalisers respectively, and (iv) the abolition of pre-trade transparency requirements in non-equities for systematic internalisers and trading venues other than order books and periodic auctions.

Fundamentally, on the direction of travel on the Level 2 approach to RCB, we have consistently argued that the Level 1 text does not preclude ESMA and the NCAs from maintaining the possibility of pricing based on the value the data represents to customer categories. Indeed, we have outlined in detail, backed up by strong legal arguments, that the text could and should be interpreted as excluding only individualised pricing, not group pricing. Whilst we stand behind our legal analysis, we have also taken stock of the fact that the draft RTS has been elaborated with a different perspective on what the Level 1 and subsequent Level 2 mandate entail. We have therefore sought to focus answers to this consultation on providing constructive and considered feedback on the approach proposed.

Turning to the content of the proposed RTS, Euronext’s key comments concern costs (1), margins (2) and the need for a dedicated RCB framework for the CTP (3) and are underlined below.

1. Costs

On costs, Euronext **generally agrees** with the proposed approach which consists in: (i) properly allocating costs attributable to the production and dissemination of market data, (ii) taking into consideration shared costs, allocated in proportion to their contribution to the production and dissemination of data, as specified in Article 1.1.(e) and Article 2 of the draft RTS. We explain below that we appreciate the fact that the RTS recognises the existence of shared costs (1.1). In addition, it is critical that the RTS recognise the point that data providers have different business models and that practices of how shared costs are allocated across different data providers will thus be heterogenous (1.2). Lastly, we comment on the list of cost categories as defined by ESMA which are all very important. (1.3).

* 1. Shared costs recognition (i.e. costs that are shared with other services)

We appreciate that the language of Article 2 paragraphs 2 to 5 implicitly recognises the existence of shared costs **(for the avoidance of doubt it is our understanding that shared costs includes the notion of joint costs) – this is critical**.

For market operators such as Euronext, a material proportion of market data production and dissemination cost is directly linked to the operation of trading activity. Given the structure of pre-trade transparent order books and order matching systems, it is not possible to provide execution services without generating market data, and it is not possible to generate pre and post trade data without also supplying a trading venue service. This joint product nature of trade execution and market data services has clear economic implications. First, with joint products, the production costs of market data and trading cannot be fully separated – i.e. some, if not all, costs are shared costs. Most of these are fixed costs that have to be incurred to produce either product. Secondly, this means that whether the recovery of costs by a trading venue is appropriate or not cannot be assessed effectively by the independent analysis of either trade execution services or market data services separately. More generally since most of the activities undertaken by an exchange are integral to the delivery of both trading and market data this means that it is more efficient to recover some of the costs of operating a trading venue through trade execution fees and some through market data fees. Indeed, the economic literature explains that, in the case of joint products, it is efficient to generate revenues through fees from both products[[1]](#footnote-2).

* 1. Various business models

In its bi-annual review of the effects of the regulation, ESMA should recognise the various business models. We recommend to explicitly recognise the existence of **various business models of data providers** by including in Recital 4 the draft of the RTS wording from paragraph 189 of the consultation paper, i.e. explicitly include that “different data providers have different business models in the production and dissemination of data” which result in various and yet valid costs allocation practices, particularly regarding **shared costs**.

The various business models of data providers (see illustrations below) should be acknowledged, and any comparison across data providers in the future should be mindful of this recognition. Indeed, due to the diversity of operating models, legitimate allocation of shared costs by data providers can look very different across a range of market operators. It is paramount that this be kept in mind by ESMA both when devising the updated RTS and in monitoring and assessing the developments in the areas of data thereafter. Practices of how shared costs are allocated across different data providers will be heterogenous. Thus, ESMA should not conclude, when assessing the situation every two years as per article 13 paragraph 5 of the MiFIR, that such heterogeneity is reflective of a need to adjust further the methodology on cost allocation.

Turning to examples of different business models, typically, many data providers under the scope of the RCB regime operate trading venues. However, even trading venues can have very distinct business models impacting both the absolute amount of costs they incur to perform their activity and the allocation of shared costs to market data. Possible differentiating features include the following:

* Pre-trade transparent vs. dark or hybrid trading: certain trading venues (trading venues A) execute a substantial amount of their trading activities based on prices formed on the order books operated by other trading venues (trading venues B – i.e. “primary markets”). Concretely, this means that a lower share of trading venues A’s shared costs for trading and market data activities will de facto be dedicated to producing and distributing market data in comparison to trading venues which execute most or all of their trading activity based on the prices formed on their own platform.
* Own technology vs. outsourced technology: trading venues can also choose to operate trading activities using their own technology set-up (which they need to create, run and maintain) or via outsourced technology. The amount of investment and funds required to develop state of the art technology to operate a trading platform surpasses the cost of outsourcing this technology to a provider. This also has the potential to directly impact costs and hence cost allocation.
* Best-in-class technology versus other performance strategy: data providers can choose to target a best-in class type of technological performance or to compete with others on other grounds, which directly impact the cost-base of their business.
  1. Recognition of various costs and cost categories

Euronext generally agrees with the proposed approach to cost calculation, even though it will require material adaptation of Euronext’s methodology and operations. Retaining the list of cost categories defined by ESMA with the proposed level of detail is necessary for the model to function as the methodology will also need to be suitable for the various business models existing across data providers.

The list of cost categories as defined by ESMA seem all very important and relevant. Moreover, the existence of a **residual cost category in the framework proposed by ESMA makes a lot of sense** since seeking to exhaustively list all possible categories at this stage would be too complex and would be contrary to the objectives pursed if this were to lead to artificial allocation in a finite list of pre-determined costs categories.

Lastly, on the list of costs, we would also recommend that audit costs should be included. This is because, just like for any other regulated and commercial activity, they form an integral part of the enforcement of the contract between the data providers and the data users and/or redistributors. Audits are an important tool for data providers to maintain a level playing field as market data agreements are largely based on information provided to contributors by market data customers.

1. Margin

Euronext believes that maintaining a **principle-based approach** to specify margins is critical and agrees with the proposed draft RTS Article 3 and Article 1.1(f). This is especially important since, as recognised in the consultation paper, ESMA is not endowed with a price competition mandate to set explicit margins. In particular Euronext agrees with the benchmark proposed by ESMA in draft RTS Article 3 to assess the reasonability of margins, i.e. the assessment against the net profit attributable to the overall business conducted by the data provider where this applies.

However, Euronext recommends that **Article 3.3 should be amended**. Euronext would stress that it is important to include in paragraph 3 of article 3 that the margins also need to be sufficient to ensure the **sustainability of the activities undertaken by the data provider**. Market operators perform a key function that enable fair and efficient markets for all and the funding of companies of all sizes. This is acknowledged in part by recital 6 of the RTS and in paragraph 195 of the consultation paper – **we believe this consideration should also be explicitly integrated in the text of article 3** of the RTS. In its absence, there is a risk that other objectives pursued by the regulation would in practice simply overshadow this key consideration. As an example, the third paragraph of article 3 currently solely underlines the importance of enabling data access to the maximum number of market data clients.

3. The need for a dedicated RCB framework for CTP

Euronext believes that a dedicated RCB framework should be defined for the CTP. As the CTP will receive underlying core market data and regulatory data for free from data contributors, it will only incur a portion of the underlying production costs associated with production of the CTP. **Applying the same RCB framework to the CTP as the one applicable to other data providers**, i.e. applying the same cost definition and reasonable margin definition to the CTP as for other data providers, **would create a situation** in which the CTP could price its products based on incomplete costs (i.e. disregarding the production and dissemination costs incurred by data providers), de facto free riding on data contributors. This would lead to distortive price competition between the CTP and other data distributors. Even the most elaborate and detailed revenue share scheme will not be able to correct this conceptual flaw of the economic model, which, in turn, will lead to no meaningful revenue being redistributed to Regulated Markets (including European local primary and SME Growth markets).

We are therefore **calling on ESMA and NCAs to consider creating a construct whereby underlying costs incurred by data providers**, such as Euronext, for the production and transmission of data, **should be taken into account in applying RCB to the CTP**. Concretely, one approach could be to clarify that the costs to be taken into consideration by the CTP for RCB will include a portion of the underlying costs incurred by data providers for the production and transmission of core market data and regulatory data.

Allocating a defined proportion of the data contributors’ costs would allow for a more subtle consideration of the landscape and the CT’s lifecycle bearing in mind that the CT is likely not to capture all potential client demand from day one and that the shift from feeds to CT use is likely to be progressive. Thus, it would make sense to define various progressive ratios of data providers’ costs starting at a relatively low percentage for year 1, which would be increased steadily in year 2 and again in year 3. Such an approach could provide for a more balanced approach overall all the while enabling a successful launch and uptake of the CT.

In order to implement such a requirement, data providers could possibly provide to their competent authorities the CT costs they incur regarding the provision of the data in question and information on the extent to which the CT competes with its own data products. NCAs could then compute the costs to be taken into account and communicate these to ESMA. ESMA could consolidate the received cost-base of relevant NCAs and transmit them for the CTP to take them into consideration into its pricing policy.

Such an approach would in our view constitute a balanced framework, unless the perimeter of the CT scope evolves in the future – in which case the percentage of data providers costs to be taken into account by the CT should be reviewed.

Another alternative to addressing the need for a dedicated RCB framework for the CTP could be to require that the CT generate extra margin for the purpose of redistributing revenue to the eligible contributors.

As an additional point, it is also important, that there be a revenue share for the bonds tape and that the RCB set-up in the case of the bonds tape include the revenue share to data providers.

<ESMA\_QUESTION\_CP1\_26>

1. Do you agree with the proposed approach to cost calculation based on the identification of different cost categories attributable to the production and dissemination of market data (i.e. (i) infrastructure costs; (ii) connectivity costs; (iii) personnel costs; (iv) financial costs; (v) administrative costs)? Please elaborate.

<ESMA\_QUESTION\_CP1\_27>

Yes, Euronext agrees with the proposed approach to cost calculation, even if it will require material adaptation of Euronext’s methodology and operations. Retaining the list of cost categories defined by ESMA with the proposed detail is necessary for the model to function as the methodology will also need to be suitable for the various business models existing across data providers.

The list of cost categories as defined by ESMA seem all very important and relevant. The existence of a **residual cost category in the framework proposed by ESMA is important** since seeking to exhaustively list all possible categories at this stage would be too complex and would be contrary to the objectives pursed if this were to lead to artificial allocation in a finite list of pre-determined costs categories.

We also recommend that audit costs be included, mirroring the practice for any other regulated and commercial activity, since these form an integral part of the enforcement of the contract between the data providers and the data users and/or redistributors. Indeed, modern legislation – such as DORA – typically introduces audits to be put in agreements (“Financial entities shall ensure contractual arrangements on access, inspection and audit rights over the ICT Provider including the frequency of such, areas to be audited and audit standards”).

On the other hand, the notion included in the consultation paper regarding financial costs related to taxes is an area where we believe it would be helpful for ESMA to provide more clarity, as it is not currently clearly evident what is meant by this.

<ESMA\_QUESTION\_CP1\_27>

1. Do you agree with the proposal of apportioning costs based on the use of resources (i.e., infrastructure, personnel, software…) for each service provided? Do you think the methodology to be used to apportion costs should be further specified? Please elaborate.

<ESMA\_QUESTION\_CP1\_28>

**Yes, Euronext agrees with apportioning costs based on the use of resources**. Euronext generally agrees with the approach which consists in: (i) properly allocating costs attributable to the production and dissemination of market data, (ii) taking into consideration shared costs, allocated in proportion to their contribution to the production and dissemination of data, as specified in Article 1.1.e) and Article 2 of the draft RTS. We would nonetheless like to underline some **key remarks and recommendations on this topic**. As outlined in further detail **below**, we appreciate the fact that the RTS implicitly recognises the existence of shared costs (1). In addition, it is crucial for the RTS to recognise that data providers have different business models and that practices of how shared costs are allocated across different data providers will thus be heterogenous (2).

1. Shared costs recognition (i.e. costs that are shared with other services)

We appreciate that the language of Article 2 paragraphs 2 to 5 recognises the existence of shared costs **(for the avoidance of doubt it is our understanding that shared costs includes the notion of joint costs) – this is critical**.

Indeed, for market operators such as Euronext, a material proportion of market data production and dissemination costs is directly linked to the operation of trading activity. Given the structure of pre-trade transparent order books and order matching systems, it is not possible to provide execution services without generating market data, and it is not possible to generate pre and post trade data without also supplying a trading venue service. This joint product nature of trade execution and market data services has clear economic implications. First, with joint products, the production costs of market data and trading cannot be fully separated – i.e. some, if not all, costs are shared costs. Most of these are fixed costs that have to be incurred to produce either product. Secondly, this means that whether the recovery of costs by a trading venue is appropriate or not cannot be assessed effectively by the independent analysis of either trade execution services or market data services.

2. Various business models

In its bi-annual review of the effects of the regulation, ESMA should recognise the existence of various business models. We recommend to explicitly recognise the **various business models of data providers** by including in Recital 4 the draft of the RTS wording from paragraph 189 of the consultation paper, i.e. explicitly include that “different data providers have different business models in the production and dissemination of data” which result in various and yet valid costs allocation practices, particularly regarding **shared costs**.

The various business models of data providers (see illustrations below) should be acknowledged, and any comparison across data providers in the future should be mindful of this recognition. Due to the diversity of operating models, legitimate allocation of shared costs by data providers can look very different for different market operators. It is paramount that this be kept in mind by ESMA both when devising the updated RTS and when monitoring and assessing the developments in the areas of data thereafter. Practices of how shared costs are allocated across different data providers will be heterogenous. Thus, ESMA should not conclude, when assessing the situation every two years as per article 13 paragraph 5 of the MiFIR, that such heterogeneity is reflective of a need to adjust further the methodology on cost allocation.

Turning to illustrations of different business models, typically, many data providers under the scope of the RCB regime operate trading venues. However, even trading venues can have very distinct business models impacting both the absolute amount of costs they incur to perform their activity and the allocation of shared costs to market data. Possible differentiating features include the following:

* Pre-trade transparent vs. dark or hybrid trading: certain trading venues (trading venues A) execute a substantial amount of their trading activities based on prices formed on the order books operated by other trading venues (trading venues B – i.e. “primary markets”). Concretely, this means that a lower share of trading venues A’s shared costs for trading and market data activities will de facto be dedicated to producing and distributing market data in comparison to trading venues which execute most or all of their trading activity based on the prices formed on their own platform.
* Own technology vs. outsourced technology: trading venues can also choose to operate trading activities using their own technology set-up (which they need to create, run and maintain) or via outsourced technology. The amount of investment and funds required to develop state of the art technology to operate a trading platform surpasses the cost of outsourcing this technology from a provider. This also has the potential to directly impact costs and hence cost allocation.
* Best-in-class technology versus other performance strategy: data providers can choose to target a best-in class type of technological performance or to compete with others on other grounds, which directly impact the cost-base of their business.

In answer to the **second part of the question**, no, Euronext **does not believe that the allocation methodology to be used to apportion costs should be further specified** as going further in this area could be akin to price regulation. However, in line with current practice, data providers should be required to provide – upon request – a detailed explanation of the apportioning methodology to NCAs.

<ESMA\_QUESTION\_CP1\_28>

1. Do you agree that the net profit as defined in Article 3 of the draft RTS can be a representative proxy of the margin applicable to data fees and would you include additional principles to define when a margin can be considered reasonable? Please elaborate.

<ESMA\_QUESTION\_CP1\_29>

Yes, Euronext agrees that the net profit is a relevant proxy for the margin.

No, Euronext does not believe that additional principles should be included to define when a margin can be considered as reasonable. Euronext believes that maintaining a **principle-based approach** to specify margins is critical and agrees with the proposed draft RTS Article 3 and Article 1.1(f). This is especially important since, as recognised explicitly in the consultation paper, ESMA is not endowed with a price competition mandate to set explicit margins. In particular, Euronext agrees with the benchmark proposed by ESMA in draft RTS Article 3 to assess the reasonability of margins, i.e. the assessment against the net profit attributable to the overall business conducted by the data provider where this applies.

However, Euronext recommends that **Article 3.3 should be amended**. Euronext would like to stress the point that it is important to include in paragraph 3 of article 3 that the margins also need to be sufficient to ensure the **sustainability of the activities undertaken by the data provider**. Market operators perform a key function that enable fair and efficient markets and the funding of companies of all sizes. This is acknowledged in part by recital 6 of the RTS and in paragraph 195 of the consultation paper – **we believe this consideration should also be explicitly integrated in the text of article 3** of the RTS. Its absence risks the potential of other objectives pursued by the regulation simply overshadowing this key consideration. For example, the third paragraph of article 3 currently solely underlines the importance of enabling data access to the maximum number of market data clients.

<ESMA\_QUESTION\_CP1\_29>

1. Do you agree with the proposed template for the purpose of information reporting to NCAs on the cost of producing and disseminating data and on the margin applied to data? Please elaborate, including if further information should in your view be added to the template.

<ESMA\_QUESTION\_CP1\_30>

Yes, Euronext agrees with the principle yet notes that the compliance with such reporting requirement will require significant investment and operational costs for Euronext as the information required is extremely granular.

More specifically, Euronext believes it is critical to recognise in the articles of the draft RTS, as well as for the purpose of information reporting, the **importance of shared costs**. For market operators such as Euronext, a material proportion of market data production and dissemination costs is directly linked to the operation of trading activity. Given the structure of pre-trade transparent order books and order matching systems, it is not possible to provide execution services without generating market data, and it is not possible to generate pre and post trade data without also supplying a trading venue service. This joint product nature of trade execution and market data services has clear economic implications. First, with joint products, the production costs of market data and trading cannot be fully separated – i.e. some, if not all, costs are shared costs. Most of these are fixed costs that have to be incurred to produce either product. Secondly, this means that whether the recovery of costs by a trading venue is appropriate or not cannot be assessed effectively by the independent analysis of either trade execution services or market data services.

<ESMA\_QUESTION\_CP1\_30>

1. What are in your view the obstacles to non-discriminatory access to data taking into consideration the current data market data policies and agreements?

<ESMA\_QUESTION\_CP1\_31>

Euronext does not believe that there are obstacles today to non-discriminatory access to data taking into consideration current market data requirements and the way our policies and agreements are set out in practice. However, as recognised in paragraphs 234 and 235 of the CP, non-discriminatory access to market data cannot be achieved by focusing solely on data providers regulated under MiFID II/MiFIR since data redistributors (which are not in scope of the regulation) also play an important role in the value chain. Indeed, focusing on Euronext’s market distribution, 75% of the market data distributed by Euronext are distributed via data redistributors and/ or sub-redistributors.

Euronext acts at many different levels in order to ensure non-discriminatory access to data, some illustrations of this are:

* Euronext distributes its data to more than 1600 contracting clients
* Euronext’s distribution and pricing policies are non-discriminatory, i.e. based on objective criteria, known in advance by clients and prospective clients. In addition, Euronext does not apply a success fee to market data clients: i.e. it is the usage of the data that is taken into account, not the revenue or other commercial success (including assets under management) clients may derive from the data they use .
* Euronext provides support to clients and prospective clients regarding its product offering and contractual and technical set-up.
* Audits are an essential activity to ensure non-discriminatory access to data. Unwarranted changes reducing the effectiveness of reasonable audit policies, would impact the level playing field across clients.
* Legislation already requires regulated data providers (such as exchanges) to have pricing schemes that are non-discriminatory and to make market data available on RCB terms. Euronext has fully adapted its pricing schemes following the publication of the ESMA’s 2021 Final Guidelines on the MiFID II/ MiFIR obligations on market data and audits of Euronext by NCAs since then have confirmed Euronext’s compliance with non-discriminatory access requirements.

Notwithstanding the above, moving forward, Euronext believes it critical, as per the current Article 5 of the draft RTS, to enable data providers to differentiate fees based **on factual elements** which are easily verifiable. In our view it is critical to maintain Article 5;1 (i) wording in particular, which refers to “criteria used to set forth [fee differentials] categories [to be] based on factual elements, easily verifiable”. Given the highly intermediated competitive landscape and fact that the market data client landscape is highly heterogenous in terms of size and market models. Any construct that would *de facto* lead to a single price being applied to all would concretely mean data providers would be unable to adapt fees to the various profiles of their clients and hence be incompatible with the notion of non-discriminatory access.

<ESMA\_QUESTION\_CP1\_31>

1. What are the elements which could affect prices in data provision (e.g. connectivity, volume)? Do they vary according to the use of data made by the user or the type of user? Please elaborate.

<ESMA\_QUESTION\_CP1\_32>

Prices in data provision are predominantly driven by the high fixed costs incurred by data providers to produce and distribute the data. Data is in the end a digital product: fixed costs account for the vast majority of market data production and distribution costs. It is important that it be understood that variable costs driven by connectivity and volume are negligible as a proportion of overall costs. It is therefore strongly advisable that the ESMA approach when considering differentials in fees goes beyond simply the elements which could affect prices in data provision and that article 5.1 of the draft RTS wording be maintained.

Pricing policies are currently defined based on the requirement to price market data on an RCB basis, i.e. taking into account relevant costs and applying a reasonable margin. Within these limits differentials in fees are then defined based on assumptions made regarding the demand for data with the objective being to define a fair fee structure designed to promote as wide a access to market data as possible all the while allowing data providers to recover their costs.

Euronext notes that paragraph 229 of the CP states that the use made out of the data by the user may call for different arrangements for the data providers in terms of connectivity, transmission channels, volume of data – all of which can justify different pricing of market data. However, whilst interesting as a concept, we feel the need to stress that requiring any possible fee differentials to be based solely on connectivity, volume or the features listed in paragraph 229 would be artificial and/or inefficient for the reasons outlined above.

For this reason, it is paramount to maintain Article 5.1 of the draft RTS wording, which requires “criteria used to set forth [fee differentials] categories [to be] based on elements, easily verifiable”.

<ESMA\_QUESTION\_CP1\_32>

1. Do you agree with ESMA’s proposal on how to set up fee categories. Please justify your answer.

<ESMA\_QUESTION\_CP1\_33>

Yes, Euronext generally agrees with ESMA’s proposal on how to set up fee categories as drafted in Article 5.1 (i) to (iii) of the draft RTS. Notably, it is our view that it is critical to maintain Article 5.1 of the draft RTS wording.

Euronext can see the nuance and balance sought by ESMA in article 5 of the draft RTS specifically which tries to take a workable approach to a very complex issue. Euronext believes it is critical to maintain Article 5.1 (i) wording, which requires “criteria used to set forth [fee differentials] categories [to be] based on factual elements, easily verifiable”.

Euronext however believes that Article 5.1 (iv) which requires that only one fee category should apply to one client (defined broadly as the market data contracting party) presents clear challenges. Clients have multiple use cases for data and limiting them to one category does not fully take into account the complexity of data uses e.g. most trading firms will have display and non-display uses and many will, for example, redistribute real-time data to their clients and use the data to calculate and distribute derived data such as indices. In a scenario where only one client category is permitted, the categories would have to be sufficiently wide to capture usage. This presents challenges since it could lead to cost savings for the larger global players and fee increases for smaller regional EU data subscribers and hence will go against one of the stated policy objectives, namely to improve access to data.

Notwithstanding the above, it is our view that Article 5.1 (i) to (iii) takes a workable approach to a complex issue and should be maintained.

<ESMA\_QUESTION\_CP1\_33>

1. Regarding redistribution of market data, do you agree with the analysis of ESMA? If not, please elaborate on the possible risks you identify and possible venues to mitigate these. In your response please elaborate on actual redistribution models.

<ESMA\_QUESTION\_CP1\_34>

We agree with ESMA’s view that the lack of focus on redistributors unjustly leaves a large part of the market out of scope, and thus agree with the suggested change to Level 1, but do not agree with the suggested practical intermediate solution of direct billing.

Euronext welcomes ESMA’s acknowledgement of the particular issues raised by the redistribution of data since this is a feature that cannot be ignored when working to adapt the Level 2 provisions on market data. We would stress that as part of the exercise currently being undertaken in Level 2, one thing must be avoided at all costs: an inequitable regime that would lead to a revenue shift from EU exchanges which are key to financing Europe’s growth to mainly non-EU data redistributors.

ESMA has previously acknowledged itself in its 2014 Technical Advice to the Commission on MiFID II and MiFIR that there is a risk that any cost reduction at the trading venue level will not be passed on to the end users and intermediaries and third-party providers are not within the scope of MiFID II / MiFIR. For these reasons, Euronext welcomes the fact that ESMA points to a potential reconsideration at Level 1 of those entities distributing data that are subject to MiFIR. However, as this will not likely happen in the short, nor even medium term, it is paramount that the **Level 2 being developed** **be drafted with the current scope of Level 1 in mind**, specifically seeking to avoid proposing measures that would lead to a **revenue shift** from EU exchanges which are committed to financing Europes growth **to non-EU data redistributors**.

This is key and in assessing the costs of market data, the overall market data value chain must be taken into account since most users obtain data through data redistributors and other intermediaries. Focusing on market data distributed by Euronext, 75% of Euronext distributed market data are distributed via data redistributors and/ or sub-redistributors. We therefore call for an adequately calibrated approach to data providers’ pricing, to ensure they are able to handle the situations where data is directly sourced by users versus those where these are sourced via data redistributors.

To that end, we believe that the wording of the current draft Article 5.1 (i) to (iii) should remain as is. This would enable data providers to select between direct or indirect billing, and yet still be able to charge data redistributors in accordance with the number of subscribers if they opt for the indirect billing model

More particularly, **we do not believe that direct billing is an adequate response to the issues rightly highlighted by ESMA**. A drastic change in the billing models between exchanges, data redistributors and end clients would require the willingness of all of these contracting parties. In Europe, the indirect billing model has been prevalent to this day for a reason: overall, it is deemed simpler for end clients as they only need to contract with one entity (often in their local language). This contrasts with the US environment, where direct billing model is more widespread, facilitated by the fact that there is one single jurisdiction versus 27 in the EU. We provide below a **short summary of the reasons why** we do not believe that direct billing is an adequate response **and** outline the **characteristics of the two** billing **models**.

**Direct billing model:**

* This is a model used by some US exchanges but not all. In the direct billing model, all clients contract directly with the exchange and report all their display usage directly to it. Concretely, if clients have redistributor terminals that are permissioned by a redistributor (data redistributor) and they have a data feed from a redistributor that the client permissions themselves, they will count and report all the data feed users directly to the exchange. The redistributor will report the terminals they permission for each client to the exchange. The exchange will then bill the client directly for both the redistributor and data feed usage related to the data they are displaying.
* It is important to note that the direct billing model is more expensive for exchanges but ensures they are closer to the client. From a client perspective, it is also more cumbersome, as they have to sign agreements with each exchange and report directly to each exchange. This explains why many European clients fundamentally have a preference for an indirect billing model.

**Indirect billing model**:

* This is a model used by European exchanges. The client contracts solely with the data redistributor. The client reports its data feed and terminal usage to the redistributor (and not to the exchange). The redistributor then reports to the exchange both the terminal and data feed usage for each client.
* The exchange bills the redistributor, and the redistributor then carries forward the billing of the client bilaterally.
* The indirect billing model lessens the reporting and billing burden and hence the costs on both clients and exchanges. Clients will report all data feed usage for all the exchange data they take back to the redistributor, rather than separately reporting to various European exchanges. The redistributor will then report all usage for all clients – both terminal and data feed – to each exchange.
* The client receives one invoice from the redistributor for all the exchange feeds it subscribes to. This is particularly efficient in Europe where multiple languages – and in some instances multiple currencies – means it is easier for a client to contract via a redistributor without having to contract individually with each exchange and be billed separately (and potentially in multiple currencies) for the different data feeds they access.

<ESMA\_QUESTION\_CP1\_34>

1. Are there any other terms and conditions in market data agreements beyond the ones listed in this section which you perceive to be biased and/or unfair? If yes, please list them and elaborate your answer.

<ESMA\_QUESTION\_CP1\_35>

No, Euronext does not believe that there are other terms and conditions in market data agreements which are biased and/ or unfair.

Euronext is supportive of initiatives aimed at making MiFID II RCB disclosures and market data policies more comparable for customers, and at ensuring that market data policies are unbiased and fair.

Euronext’s market data policies do not contain terms and conditions that are biased and/ or unfair. For example, Euronext currently makes every effort to ensure that its auditing process is as straightforward and transparent for its clients as possible. All steps of the audit process including all rights and obligations are clearly defined in the audit policy, which forms and integral part of the Euronext Market Data Agreement. The audit notification will include information such as the scope of the audit, including the audit period, products, locations to be audited. Euronext maintains an audit period of three years in line with ESMA's proposal. As part of the audit policy Euronext commits to share preliminary results and receive feedback from the customer. Customers may also request Euronext to arrange a meeting to discuss audit results following the communication of such results.

<ESMA\_QUESTION\_CP1\_35>

1. Please provide your view on ESMA’s proposal in respect to (i) the obligation to provide pre-contractual information, (ii) general principle on fair terms, (iii) the language of the market data agreement, (iv) the market data agreement conformity with published policies and (v) the provision on fees and additional costs.

<ESMA\_QUESTION\_CP1\_36>

Euronext agrees with ESMA’s proposal in these areas: it sets out a number of best practices with a view to make market data processes clearer for all those involved.

We would note that **Euronext** already **provides extensive information to clients and prospective clients**. Notably, Euronext makes contracts and price lists available online as per ESMA’s 2021 Final Guidelines on the MiFID II/ MiFIR obligations on market data. Euronext gives adequate notice of changes to the terms and conditions, market data policies and fee changes and clients have the right to cancel if they choose.

<ESMA\_QUESTION\_CP1\_36>

1. According to your experience, has the per-user model been inserted in the market data agreements as an option for billing? If yes, do you have experience in the usage of this option? Is the proposed wording of this option in the draft RTS useful? What are in your views the obstacles to its use?

<ESMA\_QUESTION\_CP1\_37>

Yes, the per-user model has been inserted in Euronext’s market data agreements. However, **in our experience only a handful of clients have expressed interest in the per-user model**. Today, mostly due to investment firms introducing cost saving measures and the replacement of human users by automated use e.g. use of smart order routers to determine execution venues, it is increasingly less likely a user will have multiple sources of real-time data or even multiple redistributor solutions. This model was more widespread in the past: ten years ago, users would have real-time data from multiple providers e.g. a direct connection to the data providers and connection to two redistributors. Euronext data shows that in the past the overlap between sources was quite high for the average user at a large bank but that this overlap has been significantly reduced in the past years. Today 6 customers have qualified for the per user model and 3 are in the process of qualifying from a client base of over 1,600.

Euronext is concerned about the **oversimplification of the drafting of the proposed Article 12** on the per-user model, as it omits two important elements from ESMA’s 2021 Final Guidelines on the MiFID II/ MiFIR obligations on market data: the eligibility process of the customer and the conditionality regarding the proportionality to the costs of making the data available, as reflected in previous Guidelines 9 and 10. We would recommend replicating these previous provisions in the RTS s to ensure that the inherent obstacles of this model as reflected in the approach.

Article 12.2 should make explicit that per user pricing shall be made available “when the customer is able to identify correctly the number of active users who will have access to the data within the organisation and provided the customer reports to the market data provider the number of active users and that “market data providers may additionally seek an initial check ex ante to validate the number of users and/or the eligibility of the customer”.

Article 12 should also include a paragraph 3, specifying that “when market data providers consider the per user basis as disproportionate to the cost of making the data available and are not able to offer it to customers, they should disclose the reasons by clearly indicating the specific features of their business model which make the adoption of the per user basis disproportionate and why these make the adoption of the model unfeasible. When impeding factors entail excessive administrative costs, market data providers should include in their explanation on disproportionality a high level and provisional indication of the costs foreseen for the implementation of the per user basis.”

<ESMA\_QUESTION\_CP1\_37>

1. Do you agree with ESMA’s proposal on penalties? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_38>

Yes, Euronext agrees with ESMA’s proposal on penalties. As per Article 14.2 we agree that penalties should not unreasonably exceed the recovery of revenues. However, we believe it critical to avoid going further, i.e. capping the penalty: if the settlement for non-compliance is limited to the price that should have been paid, this would actually create an incentive for non-compliance, resulting in an unlevel playing field. We therefore suggest that careful attention be paid to Article 14.2 and Recital 18 with this in mind. Concretely, paragraph 2 of Article 14 is important in that it mentions shall not “unreasonably” exceed the fees the client would have paid in case of compliance with the market data agreement.

Indeed, **if the settlement for non-compliance is limited to the price that should have been paid, this would actually create an incentive for non-compliance**, and lead to an unlevel playing field. Clients who properly implement the market data agreement would be disadvantaged compared to those who would breach it.

Penalties for market data are not meant at Euronext to generate additional revenue but to (i) disincentivise frauds and (ii) identify and recover unpaid fees, it is essential to keep this in mind when finalising the approach on this.

To sum up we agree that penalties should not unreasonably exceed the recovery of revenues. However, we believe it critical to avoid going further, i.e. capping the penalty.

<ESMA\_QUESTION\_CP1\_38>

1. Do you agree with ESMA’s proposal on audits? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_39>

No, Euronext does not agree with ESMA’s proposal on audits in particular the reversal of the burden of proof for it to be placed upon the data provider. Such an approach is not workable considering that it is users and users alone who are responsible for permissioning and reporting usage of the data. A provider cannot challenge the reporting without the client’s involvement. This is a critical concern -we strongly recommend that this approach be reconsidered for the reasons outlined below.

It is not realistic nor feasible to place the burden of proof on the data provider as this will significantly affect a data provider’s ability to audit and our ability to treat all clients the same regarding compliance with data agreements. Indeed, to a large extent, the market data billing process is based on the declaration of the usage of market data by the clients, not on automated tools to verify usages. We therefore urge amendment of Article 15.1 in this respect.

A **data provider cannot challenge the reporting without asking the client for the relevant records**: it is therefore paramount that the burden of proof with respect to non-compliance with the terms of the market data agreement is not placed on data providers. The involvement of data users in the audit process is necessary to ensure that all market data users are held to the same standard in terms of compliance with market data agreements.

Euronext has always welcomed the introduction of best practices in respect of audits and currently makes every effort to ensure that its auditing process is as straightforward and transparent for clients as possible. Not only are audits necessary to ensure compliance with market data agreements, but measuring and assessing data usage enables Euronext to put in place and maintain a fair and efficient model for providing data, which is an important tool to help market data providers ensure that they are providing a level playing field. Quantification and verification of market data usage, via a well-established audit process, helps to ensure that the model put in place is fair for all. Audits are necessary to recover any underpaid fees, to encourage clients to take every step towards ensuring full compliance and to maintain a level playing field. It is therefore a reasonable and necessary process that should not be undermined.

We strongly disagree with ESMA’s approach of placing the burden of proof on market data providers as outlined in paragraph 1 of Article 15.

<ESMA\_QUESTION\_CP1\_39>

1. Would you adopt any additional safeguards to ensure market data agreements terms and conditions are fair and unbiased? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_40>

No, Euronext would not adopt any additional safeguards to ensure market data agreements terms and conditions are fair and unbiased.

Considering that this is a topic where ESMA has already articulated a number of considerations and proposals, Euronext recommends that no further additional proposals or requirements by ESMA on the topic of market data agreements should be adopted. In this regard Euronext supports the following:

* + Article 7 of the draft RTS, which requests the provision of pre-contractual information
  + Article 8 on fair terms
  + Article 9 on language
  + Article 10 on conformity of the market data agreement with the market data policy
  + Article 11 on additional fees
  + Article 13 on unbundling
  + Article 14 in its current wording on penalties
  + Article 16 on market data agreement amendments (even if we believe a four month notice period would be more favourable to stakeholders, including clients, given implementation processes)
  + Article 17 on Information to be included in the market data policies
  + Article 19 on Accessible format of market data policies
  + Article 21 on Format for publication for market data policies

Notwithstanding the above, we **strongly disagree with article 15** on audits in that it places the burden of proof on the data provider which is not realistic in a context where a data provider is not able to challenge the reporting (and thus compliance) of a customer without asking the client for the relevant records.

<ESMA\_QUESTION\_CP1\_40>

1. Do you agree with the standardised publication template set out in Annex I of the draft RTS? Do you have any comments and suggestions to improve the standardised publication format and the accompanying instructions? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_41>

Euronext believes it **critical**, as proposed by ESMA, t**o establish a clear distinction in the granularity of the information to be disclosed to the public** (Annex i) **versus the information to be reported to competent authorities** (Annex ii). It is key that this really fundamental distinction in granularity can be upheld in practice.

Compliance with Annex I in its current form will require significant investment and operational costs for Euronext.

Euronext wishes to underline one area in particular which in our view requires improvement in the current draft, namely disclosures of cost allocation keys.

Disclosing such specific cost details to the public could expose commercially sensitive information to the public and competitors regarding the actual apportioning of costs and how the prices have been determined. Euronext strongly recommends that the **specific allocation keys be limited to the disclosures provided to NCAs under Annex II**.

<ESMA\_QUESTION\_CP1\_41>

1. Do you agree with the proposed list of standard terminology and definitions? Is there any other terminology used in market data policies that would need to be standardised? If yes, please give examples and suggestions of definitions.

<ESMA\_QUESTION\_CP1\_42>

Euronext supports the harmonisation of certain contractual terminology but notes that ESMA’s 2021 Final Guidelines on the MiFID II/ MiFIR obligations on market data methodology already provided the required level of clarity and granularity regarding key terms. The definitions as suggested under the Guidelines have been included in the Euronext market data agreements. As such we regret some of the proposals put forward and would stress that **changing** again **the terminology would provide little benefits**, if any, t**o end clients whilst it will create additional implementation costs** (change costs) for data providers and clients.

Regarding the proposed definitions in Article 1, we believe the below amendments should be made

Professional and non-professional clients

* Regarding the terminology for professional and non-professional clients, we have noted the change from “customer” to “client.” This means that trading venues will need to adjust their documentation again which will create additional implementation costs for little benefit.
* **The apparent** **shift to broad definitions for these concepts generally is a concern as this** leaves undesirable margins of openness and uncertainty. An oversimplification of harmonised terms could be counterproductive if they become too vague. As such, the definitions of “professional client” and “non-professional client” should **contain sufficient objective elements**, such as references to enterprise size and financial holdings, to clearly distinguish between the two. In this scenario, we suggest **reintroducing the previous definitions included in** ESMA’s 2021 Final Guidelines on the MiFID II/ MiFIR obligations on market data **but in a reversed way**. This would not substantially change the definition of the terms but would mirror current global industry standards. To this end the use of the same definition of professional and non-professional clients as under MiFID Article 4.1 (10) and (11) would bring legal clarity and be relevant in the market data context.

**Our proposal is as follows**: non-professional client should indicate a client which does not use market data to carry out a regulated financial service or regulated financial activity or to provide a service for third parties, nor is considered to be a large undertaking, e.g. meeting two of the following size requirements on a company basis: (i) balance sheet total of EUR 20 000 000 (ii) net turnover of EUR 40 000 000 (iii) own funds of EUR 2 000 000. Professional client shall indicate a client who does not meet the definition of non-professional client.

Co-existence of Article 1 and Article 18 can affect readability

* Lastly, we would underline that having both “definitions” in Article 1 and “key terminology” in Article 18 is not the easiest from a readability perspective. Instead of having definitions and then “key terminology” further down in the RTS, it would be easier to understand if there were not two separate articles including definitions and key terminology.

<ESMA\_QUESTION\_CP1\_42>

1. Do you consider that the “user-id” and the “device” should still be considered as “unit of count” for the display and non-display data respectively? Do you think (an)other unit(s) of count can better identify the occurrence of costs in data provision and dissemination and if yes, which?

<ESMA\_QUESTION\_CP1\_43>

Yes, whilst it makes sense for the “user-id” and the “device” to still be considered as “unit of count” for the display and non-display data respectively **Euronext supports having different units of count for display and non-display use on top of “user-id” and “device” and thus believes that ESMA's list should be non-exhaustive.** This is becauseterminology across the market data value chain differs e.g. Bloomberg employs the term “Access ID” rather than “User ID”. Therefore, the definitions need to be flexible to encompass all participants.

It is also important that it be stated that it is the responsibility of the Client / Subscriber to have a permissioning system that can track and count number of user IDs or devices for real time market data.

<ESMA\_QUESTION\_CP1\_43>

1. Do you foresee other types of connectivity that should be defined beside “physical connection” to quantify the level of data consumption? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_44>

Yes, Euronext foresees other types of connectivity that should be defined to quantify the level of data consumption. It is important to stress that the existence of a **“physical connection”** or the number thereof is **not a valid proxy** for data consumption. The **number of devices, terminals and display units are more accurate proxies to quantify the level of data consumption**. As such, we believe the approach should be adjusted to bear this in mind. We recommend that Article 20.1 also allow data providers to display their fees by number of devices, terminals and display units.

* A “physical connection” does not provide an accurate indication of the level of data consumption by the user: it is simply a line between the data provider and the data centre of the client, not a proxy for counting usage. A parallel can be drawn with an e-book: this is not an appropriate proxy to quantify the consumption of an e- book since the e-book device does not indicate how many persons actually consume the book.
  + Clients that operate in several locations may require a physical connection for each if they are not able to redistribute internally the data from a single location. But the level of data consumption may be the same in both cases.
  + In addition, most clients do not have a physical connection, and yet this does not entail that they are not consuming data.
* The number of user IDs viewing the data (display) and the number of devices that can simultaneously access real-time market data for non-display (non-display) are the relevant units of count to quantify the level of data consumption.
* Euronext agrees with the current draft of Article 20.1 which provides that market data clients should be able to choose freely the number and types of connections to the market data according to their needs. However, Euronext believes that the wording of Article 20.1 related to the unit of display of fees needs to be amended: the type of connectivity and the number of physical connections are not a reflection of the market data client's extent of access to the data or the use of the market data in a display and/or non-display manner. Displaying the fee of display data and non-display data by number of physical connections would make the fee schedules of market data providers more complex and difficult to understand for market data clients. **Therefore Article 20.1 should also allow data providers to display their fees by number of devices, terminals and display units.**

<ESMA\_QUESTION\_CP1\_44>

1. Do you think there is any other information that market data providers should disclose to improve the transparency on market data costs and how prices for market data are set? If yes, please provide suggestions.

<ESMA\_QUESTION\_CP1\_45>

No, Euronext does not think there is any other information that market data providers should disclose to improve the transparency on market data costs and how prices for market data are set.

The current proposals drafted by ESMA are already exhaustive and will already provide significantly more transparency on market data costs and price setting.

Euronext believes that there are already areas in the current RTS wording that would warrant a step back due to the need to balance (i) increased transparency and (ii) the need to preserve sensitive industrial and commercial information. This is typically the case of the Disclosures of cost allocation keys in the current draft of Annex I. Disclosing such specific cost details to the public could expose commercially sensitive information to the public and competitors regarding the actual apportioning of costs and how the prices have been determined. **Euronext recommends that the specific allocation keys be limited to the disclosures provided to NCAs under Annex II.**

In conclusion, this is a complex area where there is a fine line between requirements aimed at improving transparency with requirements that may be more intrusive. Considering also that this is a topic where ESMA has already articulated a number of considerations and proposals, **Euronext recommends that no further information should be disclosed**.

<ESMA\_QUESTION\_CP1\_45>

1. Do you agree with the approach on delayed data proposed by ESMA? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_46>

No, Euronext does not fully agree with the approach on delayed data proposed by ESMA. **Euronext believes that the delayed data as it is currently provided sufficiently complies with the proposed regulation.**

In terms of content, we agree with ESMA’s approach to maintaining the same requirements included in ESMA’s 2021 Final Guidelines on the MiFID II/ MiFIR obligations on market data. Specifically, this includes the fields in the Level 1 and 2 texts for post-trade transparency for delayed post-trade data, and only the first current best bid and offer prices, along with the depth of trading interest at those prices, for pre-trade data.

Regarding the format, we consider that r**equiring post-trade delayed data to be available for more than 24 hours is disproportionate** and suggest limiting the availability to the whole trading day.

<ESMA\_QUESTION\_CP1\_46>

1. Do you agree with the proposal not to require any type of registration to access delayed data? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_47>

Yes, Euronext agrees with the proposal not to require any type of registration to access delayed data.

<ESMA\_QUESTION\_CP1\_47>

1. ESMA proposes the RTS to enter into force 3 months after publication in the OJ to allow for sufficient time for preparation and amendments to be made by the industry. Would you agree? Would you suggest a different or no preparation time? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_48>

No, Euronext does not agree with the proposed timeline for implementation. Euronext believes sufficient time should be allocated for implementation once the Level 2 framework has been finalised. Based on our past experience of significant changes to the market data policy and contractual framework (to implement the ESMA’s 2021 Final Guidelines on the MiFID II/ MiFIR obligations on market data as well as part of our integration of exchanges within Euronext’s group), we believe that **12 months minimum would be necessary**. Article 27 of the draft RTS should therefore be amended to replace “three” with “twelve”.

* The efforts required from trading venues, APAs, data redistributors and end users to ensure compliance with such changes are very significant (whilst market data policies and contracts have been significantly amended recently as part of the implementation of the 2021 Guidelines – which already allowed for a 6-month implementation period). The new RTS, will require an extensive revamping of market data policies, contracts and business processes, including for clients to adapt to and test the new scenario. This cannot be reasonably implemented in a matter of just a few months.
* Focusing on Euronext and its clients alone, Euronext might have to r**e-sign agreements with at least 1,600 clients** as part of the implementation process. Our experience gained during the migration of Borsa Italiana clients from their Borsa agreement to the Euronext agreement shows this requires at least 12 months.
* The draft RTS is sufficiently different from ESMA’s 2021 Final Guidelines on the MiFID II/ MiFIR obligations on market data to suspect that other exchanges in Europe will be approaching market data clients at the same time with changes to their market data agreements and fee schedules also, **putting a heavy burden on market data clients in Europe**.
* The implementation timeline also needs to take into account that (i) **data providers and clients must wait for the level 2 to be fully finalised and published** in the official journal **to commence work on transitioning** the processes and contracts to implement the changes and that (ii) market data providers have contractual obligations to **notify clients in writing prior** to changes in standard market data policies or technical adjustments. This notice period extends to 90 days or more.
* The implementation timeline should also take into account the significant developments required to MiFIR post-trade transparency envisaged as part of the RTS 2 review and RTS on the CTP.

In addition, ideally, any change should be made on a quarter day (first day of Q1, Q2, Q3 or Q4) as the data redistributors and other participants in the market data value chain work on a 3-month cycle starting each quarter day – 1 January, 1 April, 1 July and 1 October. **Changes implemented in the middle of a quarter could significantly disrupt processes for providers and end-users alike.**

<ESMA\_QUESTION\_CP1\_48>

1. Do you have any further comment or suggestion on the draft RTS? Please elaborate your answer.

<ESMA\_QUESTION\_CP1\_49>

Putting developments in market data prices into context

Euronext would like to take the opportunity to provide a number of observations in relation to inaccuracies in the figures that can sometimes be provided by market participants to characterize evolutions in market data prices.

Indeed, it is important for policymakers to take a step back and assess whether figures provided by market participants are a fair and accurate representation of the situation. Euronext has in the past taken issue with the way some variations of prices have been presented by certain stakeholders. For example, it is not rare for a single fee type or a single trading venue to be presented as being representative of the entire industry. This is a cause for concern. Furthermore, in some cases, the fluctuations presented do not exclusively reflect changes in data pricing but also significant changes in data usage and consumption by the stakeholder and therefore should not be taken out of context. In practice there is ample evidence that user firms are changing their data consumption driven by structural changes. We feel this has not been sufficiently acknowledged so far but consider it to be a must.

More transparency on the total market data bill borne by end users – including the share of providers other than exchanges or technology fees, and the extent to which data usage has changed over the years - is key.

Considering the impact changes to the Level 2 on the topic of RCB will have on market data providers, appropriate scrutiny of methodologies used to characterize evolutions in market prices is paramount. Claims must be thoroughly checked, confirmed or challenged where appropriate. Failing to do so, and proceeding to regulatory changes that are too restrictive without being justified would pose a real threat to the overall capital markets landscape in the EU: in the end, regulation should avoid disincentivizing operators of listing and pre-trade transparent venues from continuing to perform their activities, which are critical to the operation of EU capital markets by ensuring the proper functioning of markets and valuation and financing of companies in the EU.

Evolution of market data revenues over time:

FESE has commissioned a study to provide an updated overview of the evolution of exchanges’ revenues and fees in the market data landscape, with several FESE Members providing data. FESE will share the study with ESMA. Some of the key figures and features include:

* Market data revenues from stock exchanges have remained fairly stable over recent years, registering an average annual increase of 3% from 2018 to 2023, which is broadly consistent with average EU inflation.
* The share of joint revenues (market data and trade execution) attributable to market data has also remained relatively stable over time.
* The overall fees for market data have not increased significantly. For display fees, which account for the largest proportion of market data revenues, the increase has been less than 5% per year over the last ten years. In terms of non-display fees, some exchanges have introduced changes for different customer categories. For example, for principal and brokerage, the non-display fee increase has ranged from 1% to 8% over the last ten years, depending on the FESE member. For redistribution fees, the increases have been between 1% and 4%.
* When considering the overall value chain, the cost of exchange data for end investors is relatively small. The results provide a consistent picture with the analysis conducted in 2018 by Oxera, which indicated that exchange market data fees account for around 1% of the fees typically charged by a large broker and less than 0.015% for a typical fund management firm[[2]](#footnote-3).

In conclusion, **market data revenues and fees have not increased much overall, and the latter represent a small portion to the end-investor**. Hence, we do not agree with the claim in the consultation paper that the applicability of different categories based on distinct uses of the data has resulted in an “unjustified” increase in data prices. While costs have been rising significantly during the last years due to, for example, increasing regulation, inflation and the battle for talent, several exchanges have buffered these increased costs to avoid burdening their customers further, thereby accepting a reduction in their own margins.

The need for a dedicated RCB framework for CTP

Euronext believes that a dedicated RCB framework should be defined for the CTP. As the CTP will receive underlying core market data and regulatory data for free from data contributors, it will only incur a portion of the underlying production costs associated with production of the CTP. **Applying the same RCB framework to the CTP as the one applicable to other data providers**, i.e. applying the same cost definition and reasonable margin definition to the CTP as for other data providers, **would create a situation** in which the CTP could price its products based on incomplete costs (i.e. disregarding the production and dissemination costs incurred by data providers), de facto free riding on data contributors. This would lead to distortive price competition between the CTP and other data distributors. Even the most elaborate and detailed revenue share scheme will not be able to correct this conceptual flaw of the economic model, which, in turn, will lead to no meaningful revenue being redistributed to Regulated Markets (including European local primary and SME Growth markets).

We are therefore **calling on ESMA and NCAs to consider creating a construct whereby underlying costs incurred by data providers**, such as Euronext, for the production and transmission of data, **should be taken into account in applying RCB to the CTP**. Concretely, one approach could be to clarify that the costs to be taken into consideration by the CTP for RCB will include a portion of the underlying costs incurred by data providers for the production and transmission of core market data and regulatory data.

Allocating a defined proportion of the data contributors’ costs would allow for a more subtle consideration of the landscape and the CT’s lifecycle bearing in mind that the CT is likely not to capture all potential client demand from day one and that the shift from feeds to CT use is likely to be progressive. Thus, it would make sense to define various progressive ratios of data providers’ costs starting at a relatively low percentage for year 1, which would be increased steadily in year 2 and again in year 3. Such an approach could provide for a more balanced approach overall all the while enabling a successful launch and uptake of the CT.

In order to implement such a requirement, data providers could possibly provide to their competent authorities the CT costs they incur regarding the provision of the data in question and information on the extent to which the CT competes with its own data products. NCAs could then compute the costs to be taken into account and communicate these to ESMA. ESMA could consolidate the received cost-base of relevant NCAs and transmit them for the CTP to take them into consideration into its pricing policy.

Such an approach would in our view constitute a balanced framework, unless the perimeter of the CT scope evolves in the future – in which case the percentage of data providers costs to be taken into account by the CT should be reviewed.

Another alternative to addressing the need for a dedicated RCB framework for the CTP could be to require that the CT generate extra margin for the purpose of redistributing revenue to the eligible contributors.

As an additional point, it is also important, that there be a revenue share for the bonds tape and that the RCB set-up in the case of the bonds tape include the revenue share to data providers.

<ESMA\_QUESTION\_CP1\_49>

1. What level of resources (financial and other) would be required to implement and comply with the RTS and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organisation, where relevant.

<ESMA\_QUESTION\_CP1\_50>

The efforts (financial, structural and organisation) required from Trading Venues, APAs, data redistributors and end users to implement and comply with changes at Level 2 are significant.

The content of the RTS will impact practices that lie at the base of not just the contracts and commercial models of market data providers, but also the operations of market data providers, data redistributors and users alike. As such, the level of resources required to implement and comply with the updated RTS will be significant across our organization. It will impact many different areas, including:

* Accounting and pricing methodology, with the need for additional dedicated resources from the Market data, Financial support and Compliance functions;
* Completion of reports and templates for NCAs and increased public reporting, where we will need additional resources from the Financial support function, Compliance function and Reporting function;
* Roll out to clients of new agreement, which will require the addition of minimum 10 new licence managers during the roll-out;
* Additional IT cost to remove the registration access for delayed data and should a new feed for delayed date be required, additional IT resources;
* These costs would be further increased at our level as well as the clients if the change to the audit framework would prohibit a reverse burden of proof as it would require a complete re-engineering of the distribution and accounting processes by implementing automation at scale, requiring additional resources.

<ESMA\_QUESTION\_CP1\_50>

**CP on the amendment of RTS 23**

1. Do you agree with the proposal for a daily reporting of reference data for both transaction reporting and transparency purposes?

<ESMA\_QUESTION\_CP1\_51>

Yes, Euronext agrees it makes sense to align and have one daily reporting requirement for reference data as it will make it more streamlined.

We currently send RTS1 and 2 Reference Data, and RTS23 files daily, and RTS22 transaction reporting files twice daily but data for RTS3 is sent two times monthly. We would like to clarify that the proposal is for all reference data in these files to be sent under RTS23 on a daily basis as it is not fully clear from the consultation.

<ESMA\_QUESTION\_CP1\_51>

1. For the purposes of both equity and non-equity transparency, do you prefer to retain the MiFIR identifier as currently defined or to rely on other fields for classification purposes? If latter, please outline the proposed solution.

<ESMA\_QUESTION\_CP1\_52>

We believe it makes sense to retain the MiFIR identifier but given it will now be incorporated in the RTS23 file, there is a concern that where it does not align with the CFI code, this will result in rejections. Such rejections in the RTS23 file will have more important implications, than was the case with the RTS2 file. Therefore we suggest it needs to be considered whether, instead of a full rejection, that such misalignments between the 2 classifications only generate warnings. This would mean they would still need to be corrected but that the file could still be accepted, avoiding any impact on admission to trading, among other things.

In addition, we suggest there needs to be a much stronger process to correct CFI codes with very strict timelines for incorrect classifications to be corrected by the NNA.

We also ask ESMA to confirm that it will update the guidance on mapping CFI codes to MiFIR identifiers, including setting out which fields are mandatory and optional. It would be helpful to get clarity on how the CFI fields outside of the transparency scope will be managed in RTS23 as they do not have a MiFIR identifier so we suggest it should be possible to leave the field empty and as such should not result in a rejection message (RJCT).

Example Below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **CFI Construct** | **Level2** | **Check for MiFIR identifier (Field 4, Table 2, Annex III, RTS 1 Field 3, Table 2, Annex IV, RTS 2)** | | |
| **CI\*\*\*\*** | **I Standard (vanilla) investment funds/mutual funds** | **Outside of transparency scope** | **NA** | **NA** |
| **CM\*\*\*\*** | **Miscellaneous** | **Outside of transparency scope** | **NA** | **NA** |

<ESMA\_QUESTION\_CP1\_52>

1. Is in your view, the granularity level of the MiFIR identifier adequate for the purposes of MiFIR transparency in the equity and non-equity space? If not, how should it be adjusted?

<ESMA\_QUESTION\_CP1\_53>

Yes, Euronext believes the current granularity level is sufficient and suggest if it was more granular it could result in more issues regarding alignment of classification etc. As mentioned in our response to Q. 52, we believe more work should be undertaken to ensure correct CFI codes are used. Since the implementation of MiFID II, there has been ongoing issues with respect to the CFI code assigned and the MiFIR identifier; this is mainly due to the incorrect assignment of the CFI code by the NNA. This should be reviewed and a stronger correction process established with strict timelines for NNAs.

<ESMA\_QUESTION\_CP1\_53>

1. How do you expect the change in scope of instruments subject to transparency to impact transparency reference data? Would you agree to maintain the current whole set of reference data for non-equity instruments, currently in RTS 2, in RTS 23? If not, please specify which reference data should not be retained in the view of the revised scope.

<ESMA\_QUESTION\_CP1\_54>

Yes, we agree to incorporate the reference data from RTS2 into RTS23 but please see our comments in Q. 52 regarding issues of misclassification of CFI codes.

<ESMA\_QUESTION\_CP1\_54>

1. Do you agree with deleting Field 5 of RTS 2, Annex IV, and use the CFI code for the purposes of derivatives’ contract type classification?

<ESMA\_QUESTION\_CP1\_55>

Yes we agree, but please see our comments in Q. 52 regarding issues of misclassification of CFI codes. It should also be highlighted that there is the risk that in cases where the incorrect CFI code is assigned, all the other fields based on the CFI would be incorrectly calculated.

<ESMA\_QUESTION\_CP1\_55>

1. Do you agree with the proposed alignment between RTS 23 and RTS 2 as set out in this section? Please provide details on which alignment is (not) feasible and why, considering the impact in terms of comprehensiveness and consistency of the reported information.

<ESMA\_QUESTION\_CP1\_56>

Yes, Euronext supports the approach.

<ESMA\_QUESTION\_CP1\_56>

1. As it concerns “underlying type” classification, do you agree with the proposed reliance on CFI and other reporting fields? With specific regards to Field 27, do you have proposals on how that field may be streamlined?

<ESMA\_QUESTION\_CP1\_57>

Yes, we support the approach but please see our comments in Q. 52 regarding issues of misclassification of CFI codes. It should also be highlighted that there is the risk that in cases where the incorrect CFI code is assigned, all the other fields based on the CFI would be incorrectly calculated.

<ESMA\_QUESTION\_CP1\_57>

1. Do you see additional room for simplification and/or alignment of reference data for transaction reporting and transparency purposes? What would be the impact in terms of one-off and ongoing costs, benefits and change management of such simplifications, in particular with respect to reducing and consolidating data flows to ESMA that exist currently?

<ESMA\_QUESTION\_CP1\_58>

Euronext supports the approach to try to streamline the reference data reporting requirements wherever possible. Despite the obligation that is harmonised at EU level since 2018 under MiFID II and MAR for trading venues to report financial instrument referential data to ESMA, some National Competent Authorities continue to ask trading venues to daily report referential data directly to them. One of the reasons given is the absence of certain data necessary for their mission in the RTS23. To simplify this reporting and have a common referential data, it seems to us that the NCAs and ESMA should define the exhaustive list of data necessary for their mission and include it in the RTS23 so that only one reporting process is required as this will reduce costs associated with duplicative reporting requirements.

In addition, Euronext would like ESMA to consider extending the scope of the referential data repository to include the underlying indices of financial products and to establish a centralized repository of members/participants of each trading venue. These files are currently reported to some NCAs so it would be much simpler if there was a harmonised approach to this.

We also wish to highlight a more general point on supporting streamlining of these requirements. While different RTS are being consulted upon at different times as part of the MiFIR Review, we urge ESMA to take a holistic approach to all the various RTS reporting requirements to ensure the most consistent and efficient approach is taken, so that the process is simplified as much as possible. With this in mind we would suggest from a regulatory reporting perspective, the ultimate aim should be to have two general files reported directly to ESMA (one including all referential data and one including all quantitative data).

It should also be highlighted that for any changes to these data flows that ESMA is proposing in this and other consultations related to the MiFID/R Review, it is critical there is sufficient time given and a consistent approach taken for implementation once the final details are published. It would be extremely helpful to know the specific timelines envisaged for applicability of the various technical standards as soon as possible so market participants can incorporate these into their planning projects.

Regarding the specific impact of the proposed amendments by ESMA to RTS23, as per our response to Q. 52, there is a concern that where the MiFIR identifier does not align with the CFI code, this will result in rejections. Such rejections in the RTS23 file will have more important implications, than was the case with the RTS2 file. Therefore it needs to be considered whether, instead of a full rejection, that such misalignments between the MiFIR identifier and the CFI code only generate warnings. This would mean they would still need to be corrected but that the file could still be accepted and would not impact admission to trading etc.

In addition, we suggest there needs to be a much stronger process to correct CFI codes with very strict timelines for incorrect classifications to be corrected by the NNA.

<ESMA\_QUESTION\_CP1\_58>

1. Do you have suggestions on how the fields mentioned above may be improved and streamlined?

<ESMA\_QUESTION\_CP1\_59>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_59>

1. Do you agree with the above assessment of the necessary adjustments to be made in the RTS 23 to accommodate for the identifying reference data?

<ESMA\_QUESTION\_CP1\_60>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_60>

1. Do you see a need to specify the ‘date by which the reference data are to be reported’ different from the date of application or have other comments with regards to the proposed timeline? If so, please specify.

<ESMA\_QUESTION\_CP1\_61>

Euronext does not see the need for there to be a distinction between application date and the date the reference data is to reported. We fully support ESMA’s proposal to set out that the application date should be 18 months after publication of the technical standards, as this should give all market participants sufficient time to implement all the required system changes.

In addition, given the MiFIR Review covers many other aspects relevant for Euronext, it is critical from a project implementation point of view that timelines are aligned wherever possible. In this instance, given it is proposed that the changes to RTS23 will be applicable 18 months after publication of the technical standards, we strongly urge ESMA to take the same approach for changes to RTS1 and 2. Given the interlinkages between these RTS and the fact that fields are moving from RTS1 & 2 into RTS23, we believe the timelines need to be the same – otherwise, it will result in missing data for a period of time as fields will have been removed from RTS1 & 2 but not yet included in RTS 23 which makes no sense. In addition, this could lead to potential rejections of files if they are not all fully aligned. Therefore, a harmonised approach seems the most practical and appropriate approach and will give the market sufficient time to implement the changes so is far less likely to create problematic issues and additional risks.

<ESMA\_QUESTION\_CP1\_61>

1. Are there any other international developments or standards agreed at Union or international level that should be considered for the purpose of the development of the RTS on reference data?

<ESMA\_QUESTION\_CP1\_62>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_62>

1. Do you agree with the changes proposed in the tables above? Should any other changes be considered to align the MiFIR reporting specifications with the international standards, EMIR and / or SFTR?

<ESMA\_QUESTION\_CP1\_63>

We support the general approach to align the reporting requirements so that there is more consistency**.**

In terms of specific fields, for field 33 Option Style: in cases for a specific Instrument (Ex Corporate Warrant CFI start with RW\*) where it is not possible to use the value indicated EURO/AMER/BERM we could receive a rejection message. We suggest it should be possible to still maintain the value OTHR.

<ESMA\_QUESTION\_CP1\_63>

1. Do you foresee any challenges with the proposed approach under which the CSDR publications would be integrated in FIRDS?

<ESMA\_QUESTION\_CP1\_64>

Euronext supports ESMA’s proposal. The use of the ESMA database as a source of information would simplify and standardize the process across the market. From the perspective of the CSD, considering that sourcing information from the ESMA database may have an impact on current processes for some CSDs using other sources, the use of the ESMA database should not be mandated by a given timeframe in order to allow CSDs to assess the necessary technical development and related timeline.

<ESMA\_QUESTION\_CP1\_64>

1. Do you have any comments with regards to the inclusion of additional fields in the instrument reference data published by ESMA to indicate whether the instrument is in the scope of CSDR and to specify which MIC corresponds to a venue with the highest turnover or the most relevant market in terms of liquidity?

<ESMA\_QUESTION\_CP1\_65>

Euronext supports ESMA’s proposal. The use of the ESMA database as a source of information would simplify and standardize the process across the market. From the perspective of the CSD, considering that sourcing information from the ESMA database may have an impact on current processes for some CSDs using other sources, the use of the ESMA database should not be mandated by a given timeframe in order to allow CSDs to assess the necessary technical development and related timeline.

<ESMA\_QUESTION\_CP1\_65>

1. Do you support inclusion of the new fields listed above?

<ESMA\_QUESTION\_CP1\_66>

In terms of general points, we ask that ESMA clarifies which fields are optional and mandatory.

In addition, it should be clarified that the new fields which require new data to be sourced, should only be required as of the date these new requirements become applicable. There should be no retrospective application of these fields as we can only start sourcing this data for new admissions, and not for securities that are already admitted to our markets. It is critical that this is taken into account in the operational development of the relevant files.

Regarding the specific fields:

**LEI of benchmark administrator and LEI of fund manager** – we do not currently have this information and question the necessity for it. In addition, it could also open up additional inconsistencies across trading venues and may not always be data that the issuer of the securities would have available so it could create problematic issues. We would be concerned that this could impact the acceptance of these files when admitting securities to trading.

**New field identifying the venue of admission to trading** - we fully support this additional field but it should be clarified that it is only populated by the relevant trading venue – i.e. other venues that are not the primary venue should not have to populate it. We note in the draft RTS it only refers to regulated markets but given certain MTFs are also primary venues, this needs to be facilitated by the system.

In addition, given the link with this field and the revenue distribution scheme in the consolidated tape , it is important the following operations should be considered as “initial admission to trading” under the following conditions:

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| --- | --- |
| **Shares** | **Conditions** |
| IPOs | On issuer request and new ISIN available and flag in RTS 23 |
| Private placements | On issuer request and new ISIN available and flag in RTS 23 |
| Direct listings | On issuer request and new ISIN available and flag in RTS 23 |
| M&A (including mergers, reverse mergers), spin-offs, business combinations (de-spacing) | New ISIN available *(one criterion only, as no issuer request is available for such corporate actions in RTS 23 /FIRDS).* |
| Cross-listings, dual listings | On issuer request and new ISIN available and flag in RTS 23 |
| Transfers | No new ISIN, at issuer request, change of trading venue segment MIC, for instance a company willing to transfer from the regulated market to a growth market |
| Secondary offerings\* | On issuer request *(which requires an additional field in ESMA RTS 23 for identification; there is no new ISIN)*  \*Secondary offerings play a central role in the financing of the real economy, with capital-raised volumes often surpassing those from IPOs. |

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| **ETFs** | **Conditions** |
| Listing on a Regulated Market | On issuer request *(cross-listings are standard with ETFs, a new ISIN will not be available, while the decisive issue will be the issuer request)* |

It is important that these are captured by this field as they constitute valuable operations of primary markets in terms of capital raising on EU markets, and differ to admission to trading on additional markets for pure secondary market trading purposes.

**New field to flag the action type such as new, modification, termination, error** – it would be helpful if ESMA could provide more detail on how these would be used.

**New field Number of hours of delivery during the delivery period** – it would be helpful if ESMA could provide more detail on how these would be filled. For example if the delivery period is February month, what is the number of hours (baseload or peakload) present in the month?

<ESMA\_QUESTION\_CP1\_66>

1. Do you agree with the amendment listed above for the existing fields?

<ESMA\_QUESTION\_CP1\_67>

We generally support these amendments, but would like clarity in relation to cases where the FISN for the same instrument is different across different MICs, as it is unclear if we should expect a Rejection or a Warning as is the case today.

<ESMA\_QUESTION\_CP1\_67>

1. With regards to monitoring of de-listing and re-admission, which option is preferable in your view: (i) reporting by the trading venue of all previous trading periods in the repeatable fields 10, 11 and 12 or (ii) implementing adequate reporting logic of events impacting the instrument (new, modification, termination etc) in order to enable ESMA to reconstruct all trading periods?

<ESMA\_QUESTION\_CP1\_68>

Both solutions proposed have an impact on our IT system to retrieve the old data. We need more clarification in order to understand the technical details and impacts for both solution.

<ESMA\_QUESTION\_CP1\_68>

1. Do you support suppressing the reporting of the fields listed above?

<ESMA\_QUESTION\_CP1\_69>

Yes, we support these proposals.

<ESMA\_QUESTION\_CP1\_69>

1. Do you foresee any challenges with the use of JSON format comparing to XML? Please provide estimates of the costs, timelines of implementation and benefits (short- and long term) related to potential transition to JSON.

<ESMA\_QUESTION\_CP1\_70>

Euronext notes that ESMA is considering the use of JSON format for reporting in a number of areas (i.e. RTS3, RTS21, RTS23). It is critical that any approach ESMA decides to take in relation to reporting formats must be holistic and seek to progressively extend to all areas and reporting layers; otherwise it will not produce benefits and instead would lead to additional complexity and unnecessary cost. It is critical that a thorough cost / benefit analysis is carried out by ESMA before proceeding with such a significant change.

Fundamentally, any evolution towards the JSON format must as a prerequisite receive full endorsement from all NCAs and commitment that they will also adjust their practices and requirements in favour of this new unique format. Euronext has experienced inefficiencies linked to NCAs that currently sometimes require and request different reporting formats for operational reasons for the same reporting purposes. A broader evolution towards JSON can only be meaningful and successful if such discrepancies can be dismantled in favour of a unique format that is used by all.

Lastly, given that this would be a significant structural change, it is important that sufficient implementation time is provided for this transition (between 6 – 12 months at a minimum) and it is necessary that any evolutions towards this only be taken in a context where it can be confirmed to the industry by ESMA that JSON would be the go-to format for the foreseeable future and that at a minimum, no new reporting format would be introduced or required in the coming 5 to 8 years.

<ESMA\_QUESTION\_CP1\_70>

1. In addition to including a field to identify the DPE, are there any other adjustments needed to enable comprehensive and accurate reporting of reference data by the DPEs?

<ESMA\_QUESTION\_CP1\_71>

Euronext wishes to highlight the importance of giving regulators a complete view of reference data of the European trading landscape, including off-venue trading, in order to improve the accuracy of the FIRDS database and ensure a level playing field.

<ESMA\_QUESTION\_CP1\_71>

1. With regards to the categorisation of classes of financial instruments for the purpose of the DPE register, how such classes should be designated in the register? Is there any further information that should be included in the register to ensure its usability and interoperability with other relevant systems? Do you foresee any practical implementation challenges, and if so, how they could be mitigated?

<ESMA\_QUESTION\_CP1\_72>

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<ESMA\_QUESTION\_CP1\_72>

1. Are any other adjustments needed to enable comprehensive and accurate reporting of Article 8a(2) derivatives under RTS 23?

<ESMA\_QUESTION\_CP1\_73>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_CP1\_73>

1. Marshall, A. (1920), Principles of Economics, Book V, Chapter VI, London: Macmillan [↑](#footnote-ref-2)
2. “What’s the data on market data?” OXERA, 2022 [↑](#footnote-ref-3)